

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Commonwealth Edison Company

Docket No. ER01-2985-000

ORDER ACCEPTING, AS MODIFIED,
AND SUSPENDING INTERCONNECTION AGREEMENT
AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued October 29, 2001)

This case presents the Commission with technical and legal issues raised by an unexecuted interconnection agreement between Commonwealth Edison Company (ComEd) and generator Zion Energy LLC (Zion). This order accepts, as modified, and suspends the unexecuted interconnection agreement, makes it effective subject to refund, and sets for hearing the issue of which of the interconnection costs qualify as costs of network upgrades. Our decision here benefits customers by encouraging interconnection of additional generation and by establishing a method to resolve outstanding issues in a way that should not delay Zion's interconnection to the ComEd transmission system.

Background

On August 31, 2001, ComEd filed an unexecuted generator interconnection agreement (IA) between itself and Zion. ComEd requests that the Commission allow the IA to become effective on September 1, 2001 and states that Zion is expected to begin commercial operations on June 1, 2002. The IA estimates that the interconnection will cost \$6.5 million, and offers transmission credits worth \$2.175 million to reimburse Zion for network upgrades necessary to remedy short-circuit problems associated with the interconnection.

ComEd states that it is filing the IA unexecuted because Zion disagrees with the wording of Section 7.6 of the IA, which provides that Zion will receive credits against transmission service ComEd provides. ComEd states that Zion contends that Alliance Regional Transmission Organization (Alliance) should be required to provide the credits

when it becomes the transmission provider. For its part, ComEd argues that issues relating to the transition from ComEd to Alliance should not be dealt with here, but in a generic manner that considers the equities and the interests of all parties. It argues that if Zion's proposal is adopted, ComEd would be required to provide credits for transmission service under Alliance's open access transmission tariff (OATT) regardless of whether ComEd receives transmission revenue to offset the cost of the credits. ComEd argues that it should not be subjected to revenue losses and cost shifts for joining Alliance. It adds that it has a retail rate freeze in effect until December 31, 2004, and therefore will be unable to start recovering the costs of the transmission credits from the majority of its customers until January 1, 2005. ComEd argues that the costs of interconnection should not be borne by transmission owners without the hope of timely cost recovery.

Notice, Intervention and Protest

Notice of ComEd's filing was published on September 6, 2001, with interventions and protests due on or before September 21, 2001.¹ Zion filed a timely intervention and protest. Its protest raised four principal arguments: (1) that once transmission service begins, credits are available to generators for all network upgrades for which they pay up front whether or not there is actual delivery of power; (2) that transmission credits must remain available to generators if the transmission provider transfers or assigns its transmission assets to another entity, such as a regional transmission organization (RTO); (3) that Zion should receive transmission credits for all costs associated with construction of a ring bus switchyard to ComEd's specifications; and (4) that the Commission should require ComEd to provide transmission service credits to Zion for all costs associated with the construction of transmission modifications.

ComEd filed a motion for leave to file an answer and an Answer (ComEd Answer) on October 12, 2001, addressing each of Zion's arguments in turn as described below. Zion filed a motion to reject ComEd's answer, and an answer of its own (Zion Answer), on October 18, 2001. On October 22, 2001, ComEd filed a further answer (Further Answer).

The Illinois Commerce Commission filed a motion to intervene out of time on October 10, 2001, raising no substantive issues.

¹ See 66 Fed. Reg. 47,473 (2001).

DiscussionA. Procedural Matters

Zion's timely motion to intervene makes it a party to this proceeding pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001). Given the early stage of the proceeding, the party's interest and the lack of undue prejudice or delay, we find good cause to grant the Illinois Commerce Commission's untimely motion to intervene. Although answers to protests generally are prohibited pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2001), we will accept ComEd's Answers and Zion's Answer because they have assisted us in our consideration and resolution of this case.

B. Commission Decision1. Payment of Transmission Credits

Zion seeks clarification as to when it should begin to receive transmission credits under the IA for network upgrades that it will build; specifically, whether credits should issue whenever Zion pays for delivery service, or only when actual delivery of power takes place. It states that ComEd has argued that transmission service credits are only available when transmission purchased for service from Zion Energy Facility results in the actual delivery of power. Zion argues that in Consumers Energy Company² the Commission reaffirmed its policy that credits for network upgrades are required "once delivery service begins," and that this policy does not limit the application of transmission credits to instances in which the purchase of transmission service results in the actual delivery of power.³ Zion argues that as a peaking facility, it will often reserve and pay for transmission service but not actually use it to deliver power. It states that limiting the applicability of transmission credits to instances in which there was actual delivery of power would significantly extend the amount of time needed for Zion to recover its investment in the network upgrades; further, during this time, ComEd would collect a transmission rate from Zion that included the cost of the network upgrades. Such a policy, Zion argues, discriminates against peaking facilities that do not engage in regular delivery of power on an intermediate or baseload basis.

² 95 FERC ¶ 61,233, reh'g denied 96 FERC ¶ 61,132 (2001) (Consumers).

³ Motion to Intervene and Protest of Zion Energy LLC at 5 (quoting Consumers, 95 FERC at 61,804).

Zion objects to the language in Section 7.6 of the IA that states that credits are applied against the cost of ". . . deliveries of Energy from the Facility."⁴ According to Zion, ComEd has argued that credits are in fact not available for transmission service that does not result in the actual delivery of energy.

ComEd answers that it did not intend Section 7.6 of the IA to tie the payment of credits only to periods when the generating units actually produce energy. It affirmatively states that "Zion or its assignee is eligible for credits to the extent Zion or its assignee reserves transmission service from Zion Energy Center whether or not Zion or its assignee schedules energy on the reservation."⁵ Zion's Answer states appreciation for ComEd's clarification, but asks the Commission to require ComEd to amend Section 7.6 to make it consistent with ComEd's clarification.

In light of ComEd's statement to the Commission, it is evident that the parties agree that Zion is entitled to credits whenever it schedules and pays for transmission service, whether or not energy actually flows as a result of the reservation. We will require ComEd to modify the Agreement accordingly, to make that clear.

2. Status of Credits if Transmission Assets are Assigned to an RTO

The IA states that credits for network upgrade costs can be applied against transmission service ComEd provides. Zion states, however, that ComEd refuses to include a provision in the IA that would preserve Zion's right to transmission credits if ComEd transfers, sells or assigns its transmission facilities to another entity, such as an RTO. Any such transfer, Zion states, must include the concomitant transfer of obligations such as transmission credits.

ComEd recommends that the Commission not decide at this time how existing credit arrangements will be accommodated once RTOs operate the transmission system and perform the billing functions. ComEd believes that this issue should be the subject of longer-term study of industry-wide solutions as RTO pricing and allocations are formulated.

Zion's Answer states that ComEd, as the party with control over the transfer of its facilities to an RTO, is the only entity that can assure Zion that Zion will be repaid for network upgrades through transmission credits. Zion states that this assurance must be

⁴ IA at Section 7.6.

⁵ Answer at 6.

written into the IA; otherwise, Zion may be forced to pay both ComEd and the RTO for use of the same facilities in violation of the Commission's prohibition on "and" pricing.

We conclude that it is not appropriate to prescribe in transmission owners' current interconnection agreements a specific crediting mechanism that would apply to the rates of any future RTOs that may take over the ownership, operation or control of transmission owners' transmission facilities. Instead, we will encourage transmission owners and any new RTOs, in developing the RTOs' rates and revenue distribution proposals to be filed with us, to explore cost recovery methods, including crediting.⁶

3. Costs Eligible for Future Credits

Zion first argues that ComEd is not offering it sufficient credits for network upgrades for which Zion will pay. It describes the proposed interconnection facilities, which consist of a ComEd Transmission Switchyard (TSS 974) that Zion will build (at a cost of about \$4.2 million) and ComEd will operate. Zion will connect the electric output of its generating facilities (Zion Facility) to TSS 974 by way of a transmission line that Zion owns and operates. Zion explains that as a result of ComEd's Project Diagram and Fault Analysis Study, Zion will construct a ring bus at TSS 974 and add network upgrades at ComEd Station 22 to remedy short-circuit problems.

Zion argues that ComEd refuses to characterize TSS 974 and other interconnection costs as network upgrades that qualify for transmission credits. Zion further states that ComEd has required it to interconnect at the furthest circuit from the Zion Facility, and that ComEd has refused to provide transmission credits associated with this requirement. Zion argues that it is entitled to receive transmission credits for all network upgrades.

Zion asks the Commission to require ComEd to provide credits to reimburse Zion for two categories of cost involved in this interconnection. The first is the cost of the ring bus switchyard Zion is building, which will cost \$4.2 million. The second category involves \$3 million of additional costs that Zion states it must pay to connect to the furthest of the six circuits from its facility.

⁶ The Commission also has initiated Docket No. RM01-12-000, Electric Market Design and Structure, to address, among other things, RTO tariffs, rates and revenue distribution.

Zion argues that the Commission has required in one case and allowed in another case the transmission owner to credit back to the generator the cost of constructing the ring bus switchyard.⁷ Zion further argues that the additional costs of connecting to the furthest circuit rather than a closer one is for the benefit of the network and should therefore be reimbursable as a credit to future transmission service.

ComEd responds by stating that the ring bus costs should not be credited as ordered in Duke. It argues that Duke did not decide that all cost issues related to ring bus construction should be resolved in Zion's favor; rather, the Commission found in Duke that a ring bus to which other generators were expected to connect constituted a network facility. ComEd adds that a ring bus is its standard design for connecting a generating station, and that no additional generators are expected to be connected to the ring bus, in contrast to Duke. Zion answers, however, that "throughout the interconnection study process ComEd indicated several times (particularly on project diagrams) that the ring bus could accommodate future generation."⁸ Zion adds that once the ring bus is constructed, ComEd will have sole ownership and control over its use, and that this use may include service to other generators. Zion states that the ring bus it will construct has system-wide benefits and that Zion therefore should receive transmission credits to offset its cost. ComEd replies that the project diagrams, in particular, were preliminary sketches and do not belie ComEd's claims, discussed above.

As to the costs of connecting to the furthest circuit, ComEd claims that this is the least-cost engineering option, planned in a way that is consistent with Good Utility Practice. ComEd argues it could not interconnect Zion with a line closer to its facility because other IPPs in the area have higher-priority interconnection requests, and stability or thermal loading problems would have resulted from granting Zion's request. ComEd also states that Zion has mischaracterized costs associated with the interconnection location as resulting in network benefits. Zion answers that one of the higher-priority projects is no longer viable and that there is space to allow Zion to interconnect at a circuit closer to its generation facility without causing reliability problems. ComEd, in its Further Answer, disagrees.

⁷ See Duke Energy Corporation, 95 FERC ¶ 61,279 (2001) (Duke). Zion also cites a letter order issued by staff pursuant to delegated authority in Docket No. ER99-2843-000 concerning an interconnection agreement between Elwood Energy LLC and ComEd.

⁸ Zion Answer at 5.

The parties have not presented sufficient information for us to determine whether the costs at issue are for enhancements to network resources. Our standard, as explained most recently in Consumers, is whether the costs are incurred for enhancements on the network side of the point at which the generator connects to the grid.⁹ The parties' discussions here are unclear as to the precise location of the point at which the generator connects to the grid and thus whether the costs are for enhancements on the network side of that point. It is therefore appropriate to establish hearing procedures so that the parties may clarify these issues, and thereby permit us to apply our transmission crediting policy in a way that is accurate and fair.

We find that the proposed IA has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed IA for filing as modified, suspend it for a nominal period, to become effective September 1, 2001, subject to refund, and set it for hearing on the matter discussed above.¹⁰ We will, however, also hold the hearing in abeyance to permit the parties to engage in settlement discussions under the auspices of a settlement judge.

The Commission has consistently encouraged parties to resolve disputes of this nature through settlement. We believe that formal settlement procedures may lead to a partial or a complete resolution of this case. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.¹²

While we are setting this proceeding for hearing and settlement judge procedures, there is one further matter we wish to address: interest on the monies paid by Zion for

⁹ See Consumers Energy Company, 95 FERC ¶ 61,233 at 61,804 (2001).

¹⁰ Given the nature of the issue being set for hearing, we would expect the presiding judge to be able to issue an initial decision within approximately five months of the commencement of the formal hearing process.

¹¹ 18 C.F.R. § 385.603 (2001).

¹² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

network upgrades that Zion ultimately will receive back through transmission credits. Traditionally, we have not required that the credits include interest on the monies paid; the credits reflect only the principal. This is a matter we intend to explore as part of a generic proceeding on interconnection pricing that we intend to initiate in the near future. In the interim, though, until that proceeding reaches a final conclusion, we find that the transmission credits should include interest on the monies paid.¹³

The Commission orders:

(A) The IA is hereby accepted for filing, as modified in accordance with this order, suspended for a nominal period, and made effective subject to refund. Waiver of the Commission's 60-day prior notice requirement is hereby granted to permit the IA to become effective, subject to refund, on September 1, 2001, as requested.

(B) Within 30 days of the date of this order, ComEd is directed to file modifications to the IA that comply with the requirements stated in the body of the order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R, Chapter I), a public hearing shall be held in Docket No. ER01-2985-000 concerning whether the costs are for enhancements on the network side of the point of interconnection between Zion's facility and ComEd's transmission system, as discussed in the body of this order. The hearing shall be held in abeyance while the parties attempt to settle, as discussed in paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. The designated settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable.

(E) Within 60 days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions.

¹³ See American Electric Power Service Corporation, 97 FERC ¶ ____ at ____, slip op. at 3-4 (2001) (being issued concurrently).

Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts or, if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If settlement judge procedures are continued, the settlement judge shall issue a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement discussions fail and a formal hearing is to be held, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in this proceeding, to be held within approximately 15 days of the due date of the settlement judge's report to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to rule establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Breathitt dissented in part with a
separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company

Docket No. ER01-2985-000

Breathitt, Commissioner, dissenting in part:

(Issued October 29, 2001)

In an order issued on October 25, 2001, in American Electric Power Service Corporation, Docket No. ER01-2163-001, I issued a dissent on the Commission's new policy to require interest on transmission credits. For the reasons I articulated in AEP, I dissent on this aspect of today's order.

Linda K. Breathitt
Commissioner